***

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**I.T.R. No. 93 of 1989**

**Date of decision: 17.1.2007**

**The Commissioner of Income-Tax, Jalandhar ...Petitioner**

**Versus**

**M/S Leader Valves Ldt. Jalandhar ...Respondent**

**CORAM: HON'BLE MR.JUSTICE M.M.KUMAR**
**HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: Mr.Sanjiv Bansal, Advocate for the revenue
Mr.S.K.Mukhi, Advocate for the assessee.

****

**RAJESH BINDAL, J.**

Following questions of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 30.4.1987 passed in I.T.A.No.283/ASR/1985, in respect of the assessment year 1981-82:-

> "1.Whether the Tribunal is right in law in holding that all the business tours undertaken by an employee during the previous year should be taken together for determining whether the amount of expenditure admissible under rule 6D has been exceeded or not?
>
> 2. Whether the Tribunal is right in law in holding that the interest u/s 215 of the I.T.Act, 1961 cannot be charged without proper direction in the body of assessement order when the charging of interest u/s is mandatory?"

We have heard Shri Sanjiv Bansal, learned counsel for the

***

Revenue and Shri S.K.Mukhi, learned counsel for the assessee.

**Question No.1**

At the very outset, learned counsel for the assessee submitted that the Tribunal while accepting the appeal of the assessee for the year in question had referred to the order of determination of the disallowance under this head for the assessment year 1982-83 and followed the same principle for the year in question. He further submitted that even for the years prior and subsequent thereto, the same system was followed by the assessee, which was accepted by the department for determination of admissibility of the expenditure under Rule 6D of the Income Tax Rules,1961. Still further he submitted that the Tribunal had relied upon an order passed by it earlier in the case of M/S Pioneer Sports Works Pvt. Ltd., Jalandhar Vs. The Income-tax Officer, Spl.Circle-II, Jalandhar, which was also accepted by the revenue. Relying upon the judgment of Hon'ble the Supreme Court in **Berger Paints India Ltd. Vs. Commissioner of Income-Tax (2004) 266 ITR 99**, he submitted that keeping in view the principle of consistency, revenue should not be heard to plead this question before this Court in isolation, having accepted the issue in the same lines for the other years. This contention of the learned for the assessee could not be disputed by learned counsel for the revenue.

We find substance in the arguments of the counsel for the assessee. Keeping in view the principle of consistency, revenue cannot be permitted to raise an issue in isolation only for one year and that too in the case of one assessee, while accepting the findings on the same issue in the case of other assessees and also for other years in the case of present assessee.

Accordingly, we answer the question against the revenue and in favour of the assessee..

**Question No.2**

As far as this question is concerned, contention of the learned counsel for the revenue is that the Tribunal had gone wrong in deleting the interest charged under Section 215 of the Act. The Tribunal while

***

accepting the plea of the assessee held that calculation of interest by same official was not in conformity with law and not to be treated as part of the assessment order. In response thereto, learned counsel for the assessee submitted that the question has become academic at present as in view of the final assessment framed, the amount of advance tax paid by the assessee had been found to be more than the tax payable at the time of assessment. Accordingly, there would be no question of levy of interest at all. Since these facts are not born out of the material on record in the paper-book, we refrain ourselves from taking cognizance thereof. As far as legal issue is concerned, it could not be disputed that the same is covered by an earlier judgment of this Court in **Vinod Khurana Vs. Commission of Income-Tax and another (2002) 253 ITR 578** wherein following judgment of the Hon'ble Supreme Court in **Kalyan Kumar Ray Vs. C.I.T. (1991) 191 ITR 634**, it was held that calculation of interest sent along with demand notice is part of the assessment process and valid. The relevant observations in Vinod Khurana's case (Supra) are as under:-

> "It deserves notice that even calculations, etc., are a part of the process of assessment. The "assessment" is complete only when the "taxable income" and the "due amount" are duly determined. In the case of Kalyankumar Ray V. CIT[1991] 191 ITR 634, their Lordships of the Supreme court were pleased to observe as under (headnote):-
>
> > "Assessment" is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former. The Income-tax officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice has to be issued under section 156 of the Income-tax Act, 1961, in

***

consequence of such an order. The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed 'assessment order'. It does not prescribe any form for the purpose. Once the assessment of the total income is complete with indications of the deductions, rebates, reliefs, and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time consuming. If, therefore, the Income-tax Officer first draws up an order assessing the total income and, indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete."(emphasis supplied)

In view of the above observations, it is clear that the Assessing Officer has to pass the assessment order. He has to determine the total income on which tax is leviable. The job of making calculations can even be performed by the office. However, it is only when the order of assessment and the computation sheet are signed or initialled by the Income-tax Officer that the process of assessment is complete."

In view of the binding precedent available on the issue, we

***

answer the question in favour of the revenue and against the assessee However, we leave it open to the Tribunal to consider the subsequent developments as regards the plea taken by the counsel for the assessee.

The Reference is disposed of accordingly.

**(Rajesh Bindal)**
**Judge**

**January 17 ,2007**
**Pka**

**(M.M.Kumar)**
**Judge**